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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,617

04/08/2004

Sam Jackson Kelley

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EXAMINER

CHIU, RALEIGH W

ART UNIT

PAPER NUMBER

3711

MAIL DATE

DELIVERY MODE

06/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/820,617

**Applicant(s)**

KELLEY ET AL.

**Examiner**

Raleigh W. Chiu

**Art Unit**

3711

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-10 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-5 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walenta.

Regarding claims 1, 3 and 5, Figure 1 of Walenta shows a playing surface A. Pins H correspond to the recited marker. Outer pillars E (point values 10,15,25) correspond to the recited outer scoring area. Inner pillar E (point value 100) corresponds to the recited inner scoring area. Pins F correspond to the recited game pole. Balls G are inherently capable of being place on top of the game pole as well as inherently capable of being pitched or bowled at the pillars.

Regarding the limitation of "the playing surface suitable for supporting one or more players of the game standing on the playing surface", Walenta explicitly discloses that his game consists of a flat table. See page 1, lines 9-11. As such, a table is considered to be inherently capable of supporting a standing player. Although Walenta does not disclose having his player stand on the table, such a limitation is further considered to be a rule of playing a game and such a rule does

Art Unit: 3711

not define any structure and accordingly cannot serve to distinguish the claim, which is not a process claim, from the Walenta reference. As only structural language is determinative of the metes and bounds of a patent claim and the Walenta table is considered to be capable of supporting a standing player.

Regarding the limitation of a marker "behind which a player pitches or bowls a game ball", the Walenta markers H are placed on the table to inherently allow a player to stand behind them to pitch or bowl a game ball. The fact that Walenta does not use pitched or bowled balls is irrelevant to the claimed invention. As similarly set forth above, such a limitation is directed solely to the rules of playing a game and does not define any structure and accordingly cannot serve to distinguish the claim, which is not a process claim, from the Walenta reference. Only the structural language is determinative of the metes and bounds of a patent claim and the Walenta markers are situated on the table such that a player can stand behind them.

Regarding the limitation of "an inner scoring area...having a perimeter defined by a plurality of inner poles", although Walenta only shows one inner pillar, discovering an optimum value of a result effective variable has been held to be within the capabilities of the person of ordinary skill in the art. It would have been obvious to a person having ordinary skill in

Art Unit: 3711

this art, by routine experimentation, to provide the game with any number of scoring targets in any arrangement in order to increase the opportunity for scoring. It is further noted that the inclusion of additional inner pillars arranged in a manner similar to the outer pillars would naturally define a perimeter within which a ball is inherently capable of coming to rest.

With further regard to claims 3 and 5, discovering an optimum value of a result effective variable has been held to be within the capabilities of the person of ordinary skill in the art. It would have been obvious to a person having ordinary skill in this art, by routine experimentation, to provide the Walenta game as modified above with any number of scoring targets, including three and four, in order to increase the opportunity for scoring.

Applicant argues that the "claimed structure is different from the individual scoring poles as it is now claimed as an area defined by poles or the perimeter formed by poles" (Remarks, page 7) but he fails to show such a patentable difference. The vertical pillars of Walenta as modified above clearly meet all the structural limitations set forth by the recited outer and inner poles. The fact that applicant attributes a different function to his poles does not patentably distinguish his device because the limitation does not define

Art Unit: 3711

any further limiting structure and is considered to be directed only to the rules of playing the game. The Walenta pillars, as modified above, inherently define a perimeter by their mere presence.

Regarding claims 2 and 10, the use of scoreboards with games involving points is old and well-known in the art.

Regarding claims 4, 8 and 9, it would have been obvious to one of ordinary skill in the art to use differently colored balls based on their point value.

Regarding claim 7, It would have been an obvious matter of design choice to modify the Walenta reference by having differently colored poles in order to further differentiate the point values associated with each pole.

#### ***Allowable Subject Matter***

3. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3711

***Response to Arguments***

4. Applicant's arguments filed 30 April 2007 have been fully considered but they are not persuasive for the reasons set forth above.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (571) 272-4408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim, can be reached on (571) 272-4463.

Art Unit: 3711

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Raleigh W. Chiu/

Primary Examiner, A.U. 3711

RWC:dei:feif

8 June 2007